

**Letter of Findings: 05-0406**  
**Individual Adjusted Gross Income Tax**  
**For the Period Ending December 31, 2002**

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**ISSUES**

**I. Individual Adjusted Gross Income Tax**

**Authority:** [IC 6-8.1-5-1\(a\)](#); [IC 6-8.1-5-1\(b\)](#).

Taxpayer maintains that the assessments are being protested because the income that has been used in the Department's calculations is incorrect.

**II. Tax Administration - Penalty**

**Authority:** Ind. Code § 6-8.1-10-2.1

Taxpayer protests the imposition of the ten percent (10 percent) negligence penalty.

**STATEMENT OF FACTS**

The taxpayer and his spouse are Indiana residents. The Department of Revenue (Department) issued an assessment based upon the best information available for the tax year ending December 31, 2002. For the tax year at issue the taxpayer was issued a 1099-MISC for an out-of-court settlement with a former employer.

**DISCUSSION**

**I. Individual Adjusted Gross Income Tax**

Taxpayer contends that the assessments are being protested because the income that has been used in the calculations is incorrect.

Lacking proper documentation, the Department was forced to base the proposed assessments upon the best information it had available. Indiana law provides as follows: "If the department reasonably believes that a person has not reported the proper amount of tax due, the department *shall* make a proposed assessment of the amount of the unpaid tax due on the basis of the best information available to the department." [IC 6-8.1-5-1\(a\)](#) (*Emphasis added*). In taxpayer's case, the Department believed that the "best information available" consisted of the limited records provided by the Internal Revenue Service. After obtaining that information, the Department fulfilled its legal responsibility to make a "proposed assessment." Indiana law provides that, "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is wrong." [IC 6-8.1-5-1\(b\)](#).

At hearing, the taxpayer provided additional documentation in support of its protest. A letter dated November 21, 2005, from the Internal Revenue Service regarding the taxpayer's form 1040 for the tax year ending December 31, 2002, shows that the amount of income on the 1099-MISC was not considered taxable income for federal purposes.

**FINDING**

Taxpayer's protest is sustained.

**II. Tax Administration-Penalty**

**DISCUSSION**

Taxpayer protests the imposition of the ten percent negligence penalty that the Department has imposed. Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. [IC 6-8.1-10-2.1](#).

In this case taxpayer's protest was sustained in Issue I; therefore, the imposition of the ten percent negligence penalty is moot.

**FINDING**

Taxpayer's protest is sustained.

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